86-136

Supreme Court, U.S.
FILED
JUL 29 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1985

ISLAMIC REPUBLIC OF IRAN; BANK MELLAT, GOMHOURI BRANCH, formerly BANK OMRAN,

Appellants,

vs.

SHAMS PAHLAVI, aka H.I.H. PRINCESS SHAMS PAHLAVI, DOES 1 through 99 inclusive,

Appellees.

ON APPEAL FROM
THE SUPREME COURT OF CALIFORNIA

JURISDICTIONAL STATEMENT

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38 pp

QUESTIONS PRESENTED

1. Whether the decision below, affirming dismissal of the complaint, based on the doctrine of forum non conveniens as codified by California Code Civil Proc., § 410.30 violates the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution.

2. Whether the decision below, affirming dismissal of the complaint, based on the doctrine of forum non conveniens as codified by California Code Civil Proc., § 410.30 against Article VI, Clause 2, declaring valid treaties to be the supreme law of the land, should be summarily affirmed by this Court, in light of the Algerian Accords between Iran and the United States.

PARTIES TO PROCEEDINGS BELOW

Plaintiff and Appellant:

Islamic Republic of Iran
Bank Mellat, Gomhouri Branch, formerly Bank Omran

Defendants and Respondents:

Shams Pahlavi, aka H.I.H. Princess Shams Pahlavi,
Does 1 through 99, inclusive

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Filed: May 1, 1986

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JURISDICTIONAL STATEMENT

ISLAMIC REPUBLIC OF IRAN; BANK MELLAT, GOMHOURI BRANCH, formerly BANK OMRAN, appeals from the Order Denying Review in the Supreme Court of the State of California after judgment by the Court of Appeal, Second District, Division One, No. B007454, affirming dismissal of the Complaint pursuant to California Code of Civil Procedure, § 410.30. The Judgment below violates the due process clauses of the United States and California Constitutions, and of Article VI, Clause 2, declaring valid treaties to be the supreme law of the Land.

OPINION BELOW

The judgment of the Court of Appeal, Second District, Division One, No. B007454, is unreported and appears as Appendix A hereto.

The Order Denying Review after judgment by the Court of Appeal, Second District, Division One, No. B007454, in the Supreme Court of California, is unreported and appears as Appendix B hereto.

JURISDICTION

The judgment of the Court of Appeal, Second District, Division One, affirming the dismissal by the trial court of the Complaint filed in the present action, was entered December 30, 1985. An Order Denying Review of judgment by the Court of Appeal was entered May 1, 1986.

Notice of Appeal to this Court was timely filed in the Court of Appeal on July 16, 1986. A copy of this Notice of Appeal appears as Appendix C hereto.

This appeal is being docketed in this court within ninety (90) days from the denial of review by order of the California Supreme Court. A letter entering an appearance of Steven D. Atkinson on behalf of Appellant is attached hereto. The jurisdiction of this court is invoked under 28 U.S.C. § 1257(2) and 28 U.S.C. § 1257(1).

CONSTITUTIONAL PROVISIONS AND RULES

I

Fifth Amendment, United States Constitution:

> No person shall be held to answer . . . nor shall be deprived of life, liberty, or property, without due process of law.

Fourteenth Amendment, United States Constitution:

> No state shall make or enforce any law, nor shall any state deprive any person of life, liberty, or property, without due process of law.

California Code of Civil Procedure, Section 410.30, provides:

> (a) When a court upon a motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just.

II

Article VI, Clause 2, United States Constitution:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

Federal Treaty: Algerian Accords, Point IV, Paragraphs 12, 14, 15:

> 12. Upon the making by the government of Algeria of the certification described in paragraph 3 above, the United States will freeze, and prohibit any transfer of, property and assets in the United States within the control of the estate of the former Shah or of any close relative of the former Shah served as a defendant in U.S. litigation brought by Iran to recover such property and assets as belonging to Iran. As to any such defendant, including the estate of the former Shah, the freeze order will remain in effect until such litigation is finally terminated. . . .
>
> 14. Upon the making by the government of Algeria of the certification described in paragraph 3 above, the United States will make known, to all appropriate U.S. courts, that in any litigation of the kind described in paragraph 12 above the claims of Iran should not be considered legally barred either by sovereign immunity principles or by the act of state doctrine and that Iranian

> decrees and judgments relating to such assets should be enforced by such courts in accordance with United States law.
>
> 15. As to any judgment of a U.S. court which calls for the transfer of any property or assets to Iran, the United States hereby guarantees the enforcement of the final judgment to the extent that the property or assets exist within the United States.

California Code of Civil Procedure, Section 410.30, provides:

> (a) When a court upon a motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just.

STATEMENT OF THE CASE

Appellant, Islamic Republic of Iran, is the successor government to the Islamic Empire of Iran. Appellant, Bank Mellat, formerly Bank Omran (hereinafter referred to as "the Bank") is located in Tehran, Iran, and is organized and existing under the laws of Iran. Pursuant to a Decree of 1980, the Islamic Republic of Iran has assumed all the obligations and liabilities of the Bank (C.T. 2).[1] The Islamic Republic of Iran, on behalf of the citizens of Iran, has all the requisite power and authority to conduct the Bank's business, and is successor in interest of Bank Omran, now

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[1] References to the Clerk's Transcript on Appeal will be cited (C.T.) with page and, where appropriate, followed by a colon and line number.

operating the Bank under the name Bank Mellat, Gomhouri Branch (C.T. 2).

Respondent, Shams Pahlavi ("Shams"), is a sister to the former Shah of Iran. In this case, Appellant contends that Shams misused her official position in Iran and defrauded the Iranian people while serving in her capacity as head of various Iranian foundations.

Respondent entered into an agreement with Bank Omran, wherein Respondent was to receive a cash loan of $5,000,000.00 (C.T. 556). Pursuant to this loan agreement, Shams was to pay the funds by September 30, 1981 (C.T. 556). Shams has since executed acknowledgements of her obligation to repay the debt. The last such acknowledgement was made in 1978 (C.T. 556). To date, no payment has been made on either the principal or interest due, notwithstanding Appellant's demand on Respondent for payment (C.T. 4).

Shams filed a motion to dismiss the case on the basis of *forum non conveniens,* as codified in Cal.Code Civ.Proc. § 410.30. The motion was granted. The funds and property which are the subject of the lawsuit are presently in California by the fraud and deceit of defendant Shams Pahlavi. These assets have taken form in American real property and assets. The perpetrator of the fraud is also present in California.

THE QUESTIONS ARE SUBSTANTIAL

The court should not decide this difficult and important case without full briefing and argument. The case poses substantial constitutional issues not previously considered by this court concerning the application of freely available due process safeguards on the doctrine of *forum non*

conveniens. This court should also consider the effect of the Algerian Accords on the doctrine of *forum non conveniens*.

I

FIFTH AND FOURTEENTH AMENDMENTS: DUE PROCESS

A. Prerequisite Of Suitable Alternative Forum

This Court has found that a suitable alternative forum is a prerequisite to invocation of the doctrine of *forum non conveniens*.[2] In the present case, the judgment was rendered without any contemplation as to whether defendant was amenable to process in the forum proposed as more suitable. Further, the court made no attempt to acquire defendant's submission to process nor to stay the proceedings until process had been obtained over the defendant. Accordingly, plaintiff's case was disposed of in a wholesale manner without any guarantee of an opportunity for hearing on the merits. Such a judgment is in direct contradiction to guidance previously provided by this Court.

A stay or stipulation by defendants to Iranian jurisdiction would have safeguarded against assertions that an Iranian judgment against Shams would be deficient in due process. Iran would be specially susceptible to such assertions due to historical factors. Although defendant asserted that Iran was the appropriate alternative forum for this dispute, she

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[2] In *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 507, 67 Sup. Ct. 839, 842, 91 L.Ed. 1055, the court found: "In all cases in which the doctrine of forum non conveniens comes into play, it presupposes at least two forums in which the defendant is amenable to process; the doctrine furnishes criteria for choice between them."

refused, repeatedly, to stipulate that she would appear in Iran for trial, or would be subject to jurisdiction in that forum.

Due process requires notice and a meaningful opportunity to be heard. In considering recent history and circumstances, it is conceivable that the confidence of American courts in the Iranian judicial process has been adversely impacted. Precedence indicates that taking account of history and the precise circumstances surrounding the case at hand, is appropriate, in determing the availability of a suitable alternative forum, and the ability of plaintiff to enforce any judgment it obtains from Iran.[3]

The American perception of Iran has been adversely impacted by historical factors, including the overthrow of a pro-American regime and detainment of American military and embassy personnel. Remnant hostilities between the countries have endured. Further, skepticism and mistrust have developed between the countries regarding the other's governmental system. In light of such historical realities, the Iranian judicial system may not be deemed a process consistent with principals of due process. Therefore, Iran could not reasonably be considered a *suitable* alternative forum and *forum non conveniens* could not apply.

Historical factors involving crimes by the Royal Family have caused a great animosity in the people of Iran toward members of that family. As such, Shams could not insure

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[3] In *Wasson v. Trowbridg*, 382 F.2d 807, 811, (Ct.App.2d Cir. 1967), the court found, "Thus to determine in any given case what procedures due process requires, the court must carefully determine and balance the nature of the private interest affected and of the government interest involved, taking account of history and the precise circumstances surrounding the case at hand."

her personal safety on the streets of Iran and intends not to return. Hence, the physical appearance by Shams to attend trial and defend this action in Iran is patently impractical. Therefore, absent any meaningful opportunity to be heard in an Iranian proceeding, an American court asked to enforce an Iranian judgment would conclude that due process was not satisfied.

B. Failure To Implement Stay Or Acquire Stipulation To The Alternative Jurisdiction

The order dismissing the complaint was rendered without utilization of available judicial safeguards for due process. California statutory law[4] and precedent[5] provide that a stay, rather than a dismissal may be invoked to assure a hearing after a finding of *forum non conveniens*. Notwithstanding, deep rooted precedent favoring a stay of judicial proceedings, in cases of *forum non conveniens*, the disguised judgment denies all minimal or even trifling concerns of due process. Further, the order failed to require that the party requesting the transfer submit to the jurisdiction of the forum which she proposed to be more convenient.

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[4] California Code of Civil Procedure, Section 410.30, provides:
(a) When a court upon a motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just.

[5] In *Archibald v. Cinerama Hotels*, 15 Cal.3d 853, 544 P.2d 947, 126 Cal.Rptr. 811 (1976), the court found "In light of that policy, the exceptional case which justifies the dismissal of a suit under the doctrine of forum non conveniens is one in which California cannot provide an adequate forum or has no interest in doing so."

In light of the applicable statute of limitations, the dismissal is fatal to any hearing on the merits in this country. The dismissal order improperly ignored the *freely available alternative of stay* in favor of the harsh and fatal effect of the dismissal. Such disregard for the right to be heard, is repugnant to the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

II

ARTICLE VI, CLAUSE 2: FEDERAL TREATY, ALGERIAN ACCORDS

The Algerian Accords are an international agreement concluded by the President of the United States in the lawful exercise of his constitutional powers over foreign affairs. Article VI, Clause 2, of the United States Constitution provides that valid treaties shall be the supreme law of the land.[6]

The validity of the Algerian Accords has been upheld.[7]

The intent of these provisions is patently clear. The Accords promised Iran the opportunity to litigate claims against certain nationals fleeing from the sovereignty of

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[6] In *United States v. Belmont*, 315 U.S. 203, 230 (1942), the Court stated: "[w]hile this rule in respect of treaties is established by the express language of cl. 2, Art. VI, of the Constitution, the same rule would result in the case of all international compacts and agreements from the very fact that complete power over international affairs is in the national government and is not and cannot be subject to any curtailment or interference on the part of the several states."

[7] *Dames & Moore v. Regan*, 453 U.S. 654 (1981).

Iran.[8] The provisions are clearly directed towards the assets of the Shah and his close relatives (defendant is his sister) and are indistinguishable from those that were upheld by the court in *Dames & Moore, supra*. They are part of the *sa e* instrument, adopted by the same presidential act, in settlement of the *same* international crisis. Like the establishment of the international arbitral tribunal approved in *Dames & Moore*, the provisions dealing with the assets of the Shah and his relatives are part of a comprehensive settlement of the reciprocal claims of both parties.

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[8] The Accords, Point IV, Paragraphs 12, 14 and 15, provide:

> 12. Upon the making by the government of Algeria of the certification described in paragraph 3 above, the United States will freeze, and prohibit any transfer of, property and assets in the United States within the control of the estate of the former Shah or of any close relative of the former Shah served as a defendant in U.S. litigation brought by Iran to recover such property and assets as belonging to Iran. As to any such defendant, including the estate of the former Shah, the freeze order will remain in effect until such litigation is finally terminated. . . .
>
> 14. Upon the making by the government of Algeria of the certification described in paragraph 3 above the United States will make known, to all appropriate U.S. courts, that in any litigation of the kind described in paragraph 12 above, the claims of Iran should not be considered legally barred either by sovereign immunity principles or by the act of state doctrine and that Iranian decrees and judgments relating to such assets should be enforced by such courts in accordance with United States law.
>
> 15. As to any judgment of a U.S. court which calls for the transfer of any property or assets to Iran, the United States hereby guarantees the enforcement of the final judgment to the extent that the property or assets exist within the United States.

The supreme law of the land is binding on the states as well as on U.S. District Courts. Indeed, that was the very purpose of the Supremacy Clause. This court has been unrelenting in upholding terms of an executive agreement.[9]

Accordingly, the United States Constitution demands support for the Federal Treaty and requires enforcement of the Algerian Accords. The dismissal should, therefore, be reversed. Full briefing and argument on these important issues is both necessary and appropriate in light of the substantial constitutional questions involved.

CONCLUSION

Due process requires that *forum non conveniens* not be invoked in cases where the moving party does not, and *cannot*, demonstrate that a suitable and practical alternative forum exists. Further, where substantial safeguards of due process are freely available, such as a stay of the California proceedings, they may not be irrationally disregarded.

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[9] In *United States v. Belmont*, 301 U.S. 324, 331-32 (1937), the court said: "In respect to all international negotiations and compacts, and in respect of our foreign relations generally, state lines disappear. . . . And when judicial authority is invoked in aid of such consummation, state constitutions, state laws, and state policies are irrelevant to the inquiry and decision.

The Algerian Accords patently reflect the commitment of this country to provide a forum for resolution of disputes between Iran and certain nationals leaving the sovereignty of Iran. Shams is such a national and the courts of this country are committed to accommodating the litigation regardless of sentiments regarding relative convenience.

DATED: July 28, 1986

Respectfully submitted,

STEVEN D. ATKINSON
PATRICIA STEARNS EYRES
JOSEPH G. McGUINNESS
ATKINSON, ANDELSON LOYA,
RUUD & ROMO

BY: STEVEN D. ATKINSON
Counsel for Appellants

APPENDIX A

ORDER DENYING REVIEW

SUPREME COURT
FILED
MAY 1, 1986
Laurence P. Gill, Clerk

AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 1, No. B007454

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

ISLAMIC REPUBLIC OF IRAN, et al.

v.

PAHLAVI

MOSK, J., DID NOT PARTICIPATE.

Appellants' petition for review DENIED.

s/s Broussard
Acting Chief Justice

I, LAURENCE P. GILL, Clerk of the Supreme Court of the State of California, do hereby certify that the

proceeding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this ____ day of JUN 23 1986 A.D. 19__

By s/s K. Wagovich
Deputy Clerk

APPENDIX B

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION ONE

No. B007454
(LASC no. WEC 70089)

COURT OF APPEAL-
SECOND DIST.
FILED
DEC 30 1985
CLAY ROBBINS, JR. Clerk

ISLAMIC REPUBLIC OF IRAN et al.,

Plaintiffs and Appellants,

v.

SHAMS PAHLAVI,

Defendant and Respondent.

APPEAL from a judgment of the Superior Court of Los Angeles County. David M. Rothman, Judge. Modified and affirmed.

Atkinson, Andelson, Loya, Ruud & Romo, James T. Winkler, Patricia Stearns Eyres and Joseph G. McGuiness for Plaintiffs and Appellants.

McCutchen, Black, Verleger & Shea, Susan J. Triplett and Penny M. Costa for Defendant and Respondent.

Plaintiff appeals from a judgment dismissing its action on grounds of inconvenient forum (Code Civ. Proc., § 410.30). We shall modify the judgment to delete its improvident

dismissal of the action "with prejudice"; as so modified, the judgment will be affirmed.

FACTS

The plaintiff is the government of Iran; the defendant is the sister of the late Shah of Iran. Plaintiff's complaint alleged that plaintiff is the successor in interest to an Iranian bank,[1] located in Teheran, which in 1973 loaned $5,000,000 to defendant to finance the development of land she owned. Plaintiff alleged that defendant had failed to repay either principal or interest under the loan agreement. Thus, in essence, the underlying action is a collection case.

After filing its complaint, plaintiff obtained a writ of attachment against a debt owed defendant on account of her conveyance of Los Angeles real property. Plaintiff also caused service of the summons by publication, upon proof that defendant — who plaintiff alleged was a Los Angeles resident — could not be personally served. Defendant appeared specially and moved to quash the service of summons (Code Civ. Proc., § 418.10, subd. (a)); she did not at that point notice a motion to dismiss for forum non conveniens (see *ibid*).

Defendant obtained a number of continuances of her motion to await this court's decision of personal jurisdiction issues raised in another Los Angeles action between the parties (*Islamic Republic of Iran v. Pahlavi* (1984) 160 Cal.App.3d 620). Plaintiff proceeded to take defendant's default. Defendant's motion to set aside this default was accompanied by a request for leave to file a forum non

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[1] The bank also is named as a plaintiff in the caption of the complaint; we refer herein to "plaintiff" singularly, as have the parties in their briefs.

conveniens motion, to be heard with her motion to quash. The superior court granted this request when it relieved defendant of the default. Thereafter the court heard both section 418.10 motions, denied the motion to quash, and granted the motion to dismiss for inconvenient forum. The court's "memorandum of decision" on these motions concluded with the observation, "This case is dismissed with prejudice." The court then entered a judgment, prepared by defendant's attorneys, which similarly stated, "The Complaint on file herein shall be, and is hereby, dismissed with prejudice . . . ."

DISCUSSION

1. The Algerian Accords Do Not Preclude Dismissal of This Action on Forum Non Conveniens Grounds.

Plaintiff's first argument for reversal of the judgment is that dismissal of the action is barred by provisions of the so-called Algerian Accords, the undertakings entered into by the governments of the United States and Iran to facilitate the release of Americans held hostage in Iran in 1981. In particular, plaintiff relies upon a portion of the Accords dealing with "Return of the Assets of the Family of the Former Shah." In these paragraphs 12 through 16 of the Accords, the United States pledged, inter alia, to "freeze . . . property and assets in the United States within the control . . . of any close relative of the former Shah served as a defendant in U.S. litigation brought by Iran *to recover such property and assets as belonging to Iran* . . . [and to] make known, to all appropriate U.S. courts, that *in any litigation of the kind described . . . above* the claims of Iran should not be considered legally barred either by sovereign

immunity principles or by the act of state doctrine and that Iranian decrees and judgments relating to such assets should be enforced by such courts in accordance with United States law." (Italics added.)

There are two clear, independent reasons why the foregoing provisions in no way disturb or even bear upon the judgment below. First, the Accords' strictures concerning American litigation, quoted above, in terms apply only to lawsuits which plaintiff may bring against relatives of the Shah seeking recovery of particular "property and assets as belonging to Iran." This is not such a case. Rather, Iran here seeks, by the very prayer of its complaint, not restitution of property but rather a money judgment for damages for breach of contract.

Second, the solemn undertaking by our national government to override certain defenses to actions between plaintiff and the Shah's relatives in United States courts extended only to "sovereign immunity principles or . . . the act of state doctrine . . . ." Therefore, with respect to the defense of forum non conveniens as with that of lack of personal jurisdiction, "there is no special category of Iranian litigant." (*Islamic Republic of Iran v. Pahlavi, supra,* 160 Cal.App.3d at p. 626.) In so construing and applying the plain meaning of the Accords, we join the highest court of New York, whose decision dismissing on forum non conveniens grounds an action by plaintiff against the Shah's widow has been denied review by the United States Supreme Court. (*Islamic Republic of Iran v Pahlavi* (1984) 62 N.Y.2d 474, 484-487 [478 N.Y.S.2d 597], cert. den., ___ U.S. ___ [105 S.Ct 783].)

2. Except Insofar as it Dismissed the Action "With Prejudice," the Trial Court Did Not Abuse its Discretion in Granting Defendant's Motion to Dismiss on Grounds Iran Was a More Convenient Forum.

Decision of a motion to dismiss or stay an action on account of inconvenient forum involves an exercise of discretion by the trial court (see, e.g., *Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 860-861), and such a decision will not be reversed on appeal except for an abuse of that discretion (9 Witkins, Cal. Procedure (3d ed. 1985), Appeal, §§ 275-276, pp. 286-287). In its memorandum of decision below, the superior court assessed the 25 factors bearing upon the relative convenience of forums listed in *Great Northern Ry. Co. v. Superior Court* (1970) 12 Cal.App.3d 105, 112-115, and concluded that "[u]pon evaluation of every factor there is no reason to leave this case here" in favor of remitting plaintiff to suit in its own courts (i.e., those of Iran).

Assuming that defendant is amenable to such a suit in Iran, it is difficult to quarrel with the trial court's assessment that the balance of relevant factors vastly favors that forum over California. Thus, for example, the action is between an Iranian national and her government, suing on behalf of an Iranian corporation;[2] the underlying obligation apparently was entered into and was to be performed in Iran; Iranian law would therefore govern the action; numerous witnesses to both the obligation and defendant's

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[2] We have not found in the record any evidence to support plaintiff's allegation that defendant is a resident of Los Angeles.

claim that it is barred by a superseding discharge agreement[3] are located in Iran; and so forth.

Indeed, plaintiff does not dispute that the "center of gravity" of this litigation leans heavily toward Iran and away from California. Rather, plaintiff argues that the trial court lacked discretion to invoke Code of Civil Procedure section 410.30 at all, because the alternative forum of Iran actually is not available for prosecution of an action against this defendant. Plaintiff also contends that if Iran is an available forum, the trial court nonetheless abused its discretion when it dismissed the action, rather than simply staying it pending progress of the proceedings in the foreign forum. For the reasons that follow, neither argument is valid.

Defendant's first argument builds upon the unassailable premise that availability of another forum for prosecution of the action is an indispensable prerequisite to dismissal or stay of a California lawsuit on grounds of inconvenient forum. That threshold requirement appears from the wording of Code of Civil Procedure section 410.30 itself: "When a court . . . finds that in the interest of substantial justice *an action should be heard in a forum outside of this state*, the court shall stay or dismiss the action . . . ." (Italics added.) It also is attested to by the Judicial Council's comment recommending enactment of section 410.30

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[3] Defendant attached to her moving papers a copy of an agreement she allegedly entered into with plaintiff's predecessor bank in 1978, whereby defendant assigned to the bank the lands which were the subject of the construction loan, for purposes of sales to enable repayment of the loan. Defendant averred that she is unaware of the present status of that real property. Determination of the underlying questions obviously requires application of Iranian law to events that have transpired in Iran.

(Judicial Council of Cal., Annual Rep. (1969) p. 92), and by a Supreme Court decision noting that absence "of a suitable alternative forum . . . would preclude the exercise of *any* discretion by the trial court in the matter." (*Archibald v. Cinerama Hotels, supra,* 15 Cal.3d at p. 861.)

Plaintiff contends that Iran is not available for prosecution of this action primarily because, plaintiff asserts, Iranian courts could not acquire personal jurisdiction over defendant. Plaintiff bases this assertion upon defendant's refusal to stipulate to the jurisdiction of Iranian courts at oral argument of the motion to dismiss. However, the record also contains defendants frank admission — in her points and authorities contending that Iran was a suitable and available alternative forum — that "[p]resumably, personal jurisdiction [there] could be obtained in a manner similar to that attempted here." We believe this is clearly true. In terms of "minimum contacts," defendant's relationship with Iran, as well as that forum's interest in the particular cause of action here asserted, would be more than sufficient to satisfy contemporary due process standards. And as for the mechanics of serving notice, defendant provided the trial court with a translated copy of the Iranian Code of Civil Procedure, which indicates that service would be possible under the law of that forum — personally or by publication — even were plaintiff (as is likely) not to be personally found within the country.

We therefore necessarily reject plaintiff's contention that Iran is not a jurisdictionally available alternative forum.[4]

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[4] The trial court reached the same conclusion, but in a curiously self-contradictory fashion. In its memorandum of decision, the court first stated, "It is clear that defendant is *not* amenable to the jurisdiction of

Likewise, we reject plaintiff's argument that lacking defendant's consent to jurisdiction or agreement to appear voluntarily in Iran, a judgment there rendered would be unenforceable against defendant's California assets under the Uniform Foreign Money-Judgments Recognition Act (Code Civ. Proc., §§ 1713-1713.8) for lack of personal jurisdiction. That Act clearly provides for recognition of a foreign judgment whose jurisdiction basis is as extensive as are the instant defendant's contacts with Iran. (*Id.*, § 1713.5, subd. (b).)

Plaintiff expresses a subsidiary concern that an Iranian judgment might not be enforceable in California under the Uniform Act because a California court might find that "[t]he judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law." (*Id.*, § 1713.4, subd. (a)(1). At this stage and on this record, such concern about the enforceability of an Iranian judgment is "purely speculative" (*Archibald v. Cinerama Hotels, supra,* 15 Cal.3d at p. 862) — indeed more so than the concerns about the adequacy of Hawaiian class action procedures that the cited case held no obstacle to an inconvenient forum determination. Neither this court nor the trial court has any knowledge concerning the procedural mechanisms extant in Iran, other than the rather traditional Code of Civil

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the Islamic Republic of Iran." This unfounded statement was immediately followed by reference to the Iranian law defendant had supplied the court, concluding: "The defendant presents citations that under the law of the Islamic Republic she would be subject to suit in Iran. . . . This court is, therefore, aware of no authority that would foreclose plaintiff from proceeding against defendant in Iran without her cooperation." As indicated in the text, we concur with the latter statement.

Procedure defendant filed. Furthermore, unlike the mandatory requirement that there be an alternative forum, the enforceability of the alternative forum's judgment is merely one of many factors a court deciding a forum non conveniens motion must consider. (See *Great Northern Ry. v. Superior Court, supra,* 12 Cal.App.3d at p. 113; Judicial Council of Cal., *supra,* at p. 93.) Plaintiff's speculative concern about the impartiality of the tribunal it will provide constitutes no basis for concluding that the trial court abused its discretion in remitting plaintiff to its own courts.

Anticipating for the sake of argument our conclusions that Iran is an available and more suitable forum than California, plaintiff contends that even if this be so, the trial court should only have stayed the instant proceedings, and that to dismiss them was an abuse of discretion. The authority upon which plaintiff relies does not sustain its position. Although the court in *Archibald v. Cinerama Hotels, supra,* generally alluded to dismissal being appropriate only in an "exceptional case" (15 Cal.3d at pp. 858-859), the court's actual holding was that dismissal is an abuse of discretion when the plaintiff is a bona fide California resident. (*Id.,* at pp. 857-859; see *Henderson v. Superior Court* (1978) 77 Cal.App.3d 583, 598.) That is not this case. Moreover, the only factor which plaintiff adduces in support of its request for the alternative relief of a stay of proceedings is the above-mentioned speculation about enforceability of an Iranian judgment in California. This concern simply does not establish that dismissal rather than stay of an action having so little relationship to California and so great a nexus with Iran was an abuse of discretion.

However, we do find that the trial court exceeded its discretion in ordering that the action be dismissed "with prejudice." Such a disposition, which could give the

impression that another suit on the same cause of action is now barred by res judicata, was improper because the instant motion to dismiss nowise addressed the merits of the cause of action. Rather, the trial court determined no more or less than that California is not the appropriate forum for maintenance of this suit. (Cf. *Nichols v. Canoga Industries* (1978) 83 Cal.App.3d 956, 967.) The general rule in California is that an involuntary dismissal for procedural defaults is not to be rendered "with prejudice." (See, e.g., Code Civ. Proc., § 581, subds. (f), (g).) Accordingly, we shall modify the judgment of dismissal to delete its "with prejudice" disposition.

DISPOSITION

The judgment is modified by striking from its second paragraph the words "with prejudice." As so modified the judgment is affirmed. Defendant shall recover costs on appeal.

NOT TO BE PUBLISHED.

s/s LUCAS, J.

We concur:

s/s SPENCER, P.J.

s/s HANSON (Thaxton), J.

APPENDIX C

COPY
TO BE CONFORMED

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

Received for filing in
Clerk's Office
Second Appellate District
JUL 16 1986
NO: (B00 7454)

ISLAMIC REPUBLIC OF IRAN; BANK MELLAT, GOMHOURI BRANCH, formerly BANK OMRAN,

Plaintiffs and Appellants,

vs.

SHAMS PAHLAVI, aka H.I.H. PRINCESS SHAMS PAHLAVI, DOES 1 through 99, inclusive,

Defendants and Respondents.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Islamic Republic of Iran; Bank Mellat, Gomhouri Branch, formerly Bank Omran, the appellant above-named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of California, on May 1, 1986, denying appellant's Petition for Rehearing after judgment by the Court of Appeal Second District, Division One,

Number B00 7454, affirming the dismissal of the complaint, entered in this action.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

DATED: July 14, 1986

By: s/s James T. Winkler
Counsel for Appellant
JAMES T. WINKLER
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PROOF OF SERVICE

STATE OF CALIFORNIA ss.
COUNTY OF LOS ANGELES

I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address is: 13304 E. Alondra Boulevard, Suite 200, Cerritos, California 90701.

On July 16, 1986, I served the within NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES on the interested parties in said action, by personal hand delivery addressed to the following:

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The Honorable David M. Rothman
Los Angeles Superior Court - West Court
1725 Main Street, Dept. H
Santa Monica, CA 90401

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of July, 1986, at Cerritos, California.

s/s Jodi L. Carr